

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MATTHEW LEE ROBERSON

Petitioner,

v.

WARDEN SALMONSON

Respondent.

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Civil Action No. 5:22-cv-00085-JRG-JBB

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner Matthew Roberson, proceeding *pro se*, filed the above-styled and numbered application for the writ of habeas corpus complaining that he has not been given proper credit for time spent on home confinement. Together with his petition, he filed a Motion for Summary Judgment setting out his claims and requesting judgment in his favor. (Dkt. No. 2) (the "Motion"). The case has been referred to United States Magistrate Judge Boone Baxter in accordance with 28 U.S.C. § 636(b).

After review of the pleadings, the Magistrate Judge issued a Report and Recommendation recommending that Petitioner's Motion be denied. (Dkt. No. 9.) The Magistrate Judge observed that summary judgment is not normally an appropriate vehicle for adjudicating habeas corpus claims and that in any event, summary judgment motions filed before the opposing party has answered are normally denied unless it appears to a certainty that no answer which the adverse party might properly serve would present a genuine issue of fact. (*Id.* at 2.) The Magistrate Judge further noted that denial of Petitioner's Motion would not prevent him from litigating his claims once an answer has been filed. (*Id.*)

Petitioner received a copy of the Magistrate Judge's Report on January 5, 2023, but filed no objections; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.").

Accordingly, it is **ORDERED** that the Report of the Magistrate Judge (Dkt. No. 9) is **ADOPTED** as the opinion of the District Court. It is further **ORDERED** that the Petitioner's Motion for Summary Judgment (Dkt. No. 2) is **DENIED** without prejudice to Petitioner's right to litigate his claims following the Respondent's answer.

So ORDERED and SIGNED this 14th day of February, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE